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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,748	02/07/2006	Maria Palmquist	15097NP	2219

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EXAMINER

ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/536,748

Applicant(s)

PALMQUIST, MARIA

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/21/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 1-6 are pending in the instant application.

Response to Arguments

Examiner hereby withdraws requirement for a new application data sheet and requirement for a new declaration, and further acknowledges that new abstract complies with 37 CFR 1.52(b)(4).

Arguments presented under 35 USC 103

Applicant's arguments filed on 9/21/06 have been fully considered but they are not persuasive. Applicant presented that Richardson reference does not teach "compactable to and/or expandable from a folded condition which forms a single package that has substantial propagation in one plane and requires little space" (see remarks page 11 lines 7-9), further presented that "Richardson patent does not teach a tube and a protection that are compactable (page 11 lines 23 and 24, page 12 line 1), however, Richardson discloses the tube is preferably formed of a flexible plastic material such as polyvinylchloride, see page 1, lines 65-66. Further discloses the protection (34) is made from flexible plastic material, see lines 121-122. Therefore, the construction material of the tube and protection/mask make the protection and tube expandable and compactable. Thus, arguments with respect to Richardson fail to teach "expandable" and "compactable" protection and tube are not persuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2134393A to Richardson et al.

As to claim 1, GB 2134393A to Richardson et al. disclose an apparatus in figure 1 which is capable for securing inhalation of substantially smokeless air from a smoky room (recitation intended use is not given patentable weight, however specification page 1, col.1, lines 5-15 states the apparatus is used by person who find themselves obligated to spend some time in a smoke-filled room), the apparatus comprises a protection (mask 32) that is arranged over at least nose and mouth at face of a user ("mask may be adapted to fit over the nose and mouth region only" as stated on page 1, lines 68-70, also depicted in figure 1), a tightly arranged tubular body (16) is connected to the protection and that forms a length (L) in an elongated condition that at least extends to adjacent aground level when the user is standing (as depicted in fig.1), a nozzle (36) is arranged at a first end of the tubular body at the inside of the protection adapted to be placed against the mouth of the user (see fig.1), which communicates with an air inlet opening (24) in a second end of the tubular body and the protection are formed of flexible materials (see page 1, line 49),, and both the protection and tubular body are compactable to and/or expandable ("the tube is preferably formed of a flexible plastic material such as polyvinylchloride" see page 1,

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lines 65-66; “mask 34 of flexible plastic material” lines 121-122, therefore, construction material makes the protection and tube expandable and compactable) from a folded condition which forms a compact package that has substantial propagation in one plane and requires a little space (expected result from bending/folding of the protection and tube for packaging).

As to claim 3, Richardson et al. disclose wherein the tubular body includes a fastening apparatus (30), suitably adjacent of the air inlet opening in an outer portion of the tubular body, whereby the air inlet opening of the tubular body is retained adjacent a lower leg or foot of the user (via 28).

As to claim 4, Richardson et al. do not disclose a valve (“valve means is provided in mask 32 to control the flow of air into and out of the mask”, see page 2, lines 1-2) for control of inhaled and exhaled air is arranged in the tubular body, which is connected to the protection.

As to claim 6, Richardson et al. disclose wherein the tubular body is formed of a thin walled, elastic and flexible material (as described in claim 1) which is provided with folds (“ribs”, page 2, lines 14-15) so that the tubular body can be compressed and compacted (“the tube is preferably formed of a flexible plastic material such as polyvinylchloride” see page 1, lines 65-66; “mask 34 of flexible plastic material” lines 121-122, therefore, construction material makes the protection and tube expandable and compactable, to a compact and substantially flat space saving unit (expected result from bending/folding of the protection and tube for packaging).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2134393A to Richardson et al. in view of Smith US Patent No. 5,377,670.

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As to claim 5, Richardson et al. disclose all limitation as cited for claim1 except for “helical strip arranged in the air channel, that in elongated state substantially corresponds to the length formed by the air channel”. However, at the time of the invention, twisting/corrogulations structure used inside a breathing tube was well known to one of ordinary skills in the art. Smith US 5377670 teaches corrugated tube, where the corrugations are provided along the length of the tube to facilitate bending or shaping the tube without risk of stopped gas flow because of the kinking (see col.5 lines 45-49). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the apparatus of Richardson an inner corrugated structure inside the tube (16) for the purposes of preventing kinking of the tube as taught by Smith.

Allowable Subject Matter

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,724,958, US 6834646, and US 3487765 are cited to teach flexible/foldable protection apparatus.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

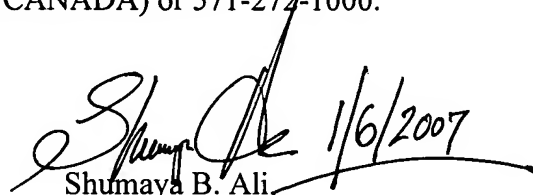
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-W-F 8:30am-5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Shumaya B. Ali
Examiner
Art Unit 3771


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
1/7/07